



NCN: [2021] UKFTT 384 (TC)

(TC) 08306

Income tax assessment – permission to appeal out of time

FIRST-TIER TRIBUNAL

Appeal number: TC/2020/01676

TAX CHAMBER

BETWEEN

CHARALAMBOS HADJICHARALAMBOUS

Appellant

-and-

THE COMMISSIONERS FOR

HER MAJESTY’S REVENUE AND CUSTOMS

Respondents

TRIBUNAL: JUDGE SARAH ALLATT

The hearing took place over 2 days, 14 June 2021 and 20 September 2021. The form of the hearing was video attended by all parties. A face to face hearing was not held as a hearing in a court room was not felt necessary or desirable bearing in mind the ongoing pandemic. The documents to which I was referred are a bundle of documents of 114 pages, a supplementary word document and 8 Appendices, and further correspondence that was emailed to me during the course of the hearing.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Mr M Ttofi for the Appellant

Mr D Hickey-Baird, litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents

DECISION

INTRODUCTION

1. This is an appeal out of time against a Income Tax notices of assessment for the years 08/09, 09/10, 10/11, 11/12, 12/13 and 13/14.

BACKGROUND

2. HMRC contend the appeal is made 37 months late. The background is complicated due to the fact that the assessments were part of a criminal case against Mr Hadjicharalambous prosecuted by HMRC. HMRC first took the position that Mr Hadjicharalambous was not entitled to appeal these as the notices of assessment were agreed during the criminal proceedings, but then in a letter of 31 January 2017 they confirmed they would accept that the Appellant had the right of appeal. HMRC take the date of this letter as the start of the 30 days period to appeal.

3. The Appeal was made on 4 May 2020.

SUBMISSIONS BY THE APPELLANT

4. The Appellant's representative took us through the timeline and various pieces of correspondence. I did not hear direct evidence from the Appellant. Not all correspondence was relevant to the matters under appeal at this hearing, but the relevant details are set out below:

5. On 31 January 2017 HMRC wrote to the Appellant saying 'HMRC are therefore obliged to accept requests for "Independent Statutory Review" and/or your direct appeal to "Tribunal". In the event that you request "Independent Statutory Review", please confirm grounds for appeal in the formal request that should be sent to this office to be actioned. In the event there are further and better particulars that have not been presented previously to HMRC as part of the Criminal Court Case, please do not send them to HMRC until they are specifically requested by the relevant office. It would be appreciated if you can confirm your intention in the progression of this matter to either "Independent Statutory Review" and/or your direct appeal to "Tribunal" within 30 days of the date of issue of this letter.'

6. On 17 March 2017 HMRC wrote again to the Appellant saying 'As you have neither requested an "independent statutory review" nor taken your appeal direct to the tribunal within the 30 day time limit as stated in the letter then I now consider the matter of the assessments finalised. Your appeal has been treated as settled on the basis already set out.'

7. The Appellant's representative then wrote to HMRC on 30 March saying 'Please note that the reason for not replying back to you is that we have been trying to establish from HMRC departments to whom we shall write to, to establish who is responsible for providing us with information regarding the court case and the outcome. We shall be most grateful if you can kindly provide us with the details of HMRC departments who can assist us in bringing Mr Hadjicharalambous affairs up to date. We would appreciate that our appeal is continuing until the relevant departments from HMRC gets in touch with us to finalise the outstanding Tax Return, VAT and PAYE.'

8. HMRC responded to this letter on 21 April 2017, saying the officer in question did not hold any records, and saying 'Any papers required by Mr Hadjicharalambous would have to be provided by his own defence team and the court.'

9. Tax returns were filed as follows:

23 November 2017 – Tax returns to 5 April 2008, 5 April 2009 and 5 April 2010 sent to HMRC in paper format.

7 December 2017 – Tax returns to 5 April 2011, 5 April 2012 and 5 April 2013 sent to HMRC in paper format.

7 December 2017 – tax return to 5 April 2014 electronically filed to HMRC.

10. There was various correspondence with HMRC since the filing of these tax returns, but that correspondence related to years other than the years in question here.
11. On 20 January 2020 the Appellant was issued with a warning of Bankruptcy.
12. On 6 February 2020 the Appellant replied asking for the returns to be processed.
13. On 4 May 2020 the Appellant made an appeal to this Tribunal.
14. The Appellant's representative submitted that the delay was not 37 months, because it should have been clear to HMRC that the letter of 30 March 2017 to HMRC made it clear they did not consider the matter settled and asked for further help.
15. The Appellant's representative was not specific as to exactly what (if any) the delay in the Appeal to the Tribunal was. The representative concentrated on correspondence with HMRC throughout the time period rather than referring to any alternative document that may have started a time limit to appeal to the Tribunal.
16. The Appellant's representative contended that the delay (if any) was due to the fact that the Appellant was attempting to get records from HMRC to file returns that were due, and that these returns were filed in November 2017.
17. The Appellant's representative contended that they were passed from department to department in HMRC, that there were delays in responses from HMRC, and that no warning was given by HMRC upon expiry of time limits.
18. The Appellant's representative also made the point that the Appellant had been told at the criminal case to provide HMRC with correct information, which was what he had done. It was not fair to penalise him when he did not ignore the request.

HMRC SUBMISSIONS

19. HMRC submitted that the 30 day timelimit started from the letter written on 31 January 2017, and therefore the appeal was 37 months late. They submitted that this was a very serious delay.
20. They submitted that it was not the job of HMRC to remind taxpayers about deadlines.
21. They submitted that it was not necessary to submit the tax returns in order to appeal the assessment. It was therefore irrelevant that the Appellant was seeking information to file the returns, this should not have held up the Appeal.
22. They submitted that the consequences of allowing this appeal would be to allow a time limit to be missed by a large margin by a represented Appellant, and that no good reasons had been submitted why this should be allowed.
23. They also submitted that HMRC staff had moved on in the intervening period, and therefore witness evidence would be harder to obtain and would be less reliable due to the significant period of time that has elapsed.

THE LAW

24. Section 31A TMA requires a taxpayer to appeal a notice to HMRC within 30 days.
25. The law surrounding late appeals has recently been considered by the Upper Tribunal in *Martland* [2018] UKUT 178 (TCC). Previously the leading case had been *Data Select* [2012] UKUT 187 (TCC).
26. *Data Select* had set out five considerations for the FTT to consider
 - (1) What is the purpose of the time limit?
 - (2) How long was the delay?
 - (3) Is there a good explanation for the delay?
 - (4) What will be the consequences for the parties of an extension of time?
 - (5) What will be the consequences for the parties of a refusal to extend time?
27. *Martland* has modified this approach very slightly, saying this:

When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be.

In considering that question, we consider the FTT can usefully follow the three-stage process set out in *Denton*:

1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being ‘neither serious nor significant’), then the FTT is unlikely to need to spend much time on the second and third stages - though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

(2) The reason (or reasons) why the default occurred should be established.

(3) The FTT can then move onto its evaluation of ‘all the circumstances of the case’. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission, .

That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected.

In doing so, the FTT can have regard to any obvious strength or weakness of the applicant’s case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one.

Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT’s consideration of the reasonableness of the applicant’s explanation of the delay. Nor should the fact that the applicant is self-represented – Moore-Bick LJ said ‘being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules’. HMRC’s appealable decisions generally include a statement of the relevant appeal rights in reasonably plain English and it is not a complicated process to notify an appeal to the FTT, even for a litigant in person.

DISCUSSION

28. There are two questions for me to answer. Was the appeal late, and if so, was there a reasonable excuse?

29. It is clear that the 30 days to appeal cannot start earlier than the date of the letter written by HMRC on 31 January 2017, as up to that point HMRC appeared to hold the view that there was no further appeal process after the conclusion of the criminal case.

30. The 31 January letter states that HMRC now accept that there is a right of appeal, and asks the appellant to therefore, within 30 days, ask for an independent review or appeal to the Tribunal.

31. The Appellant did neither of those things.

32. The Appellant did write to HMRC after HMRC had pointed out that the matter was now being treated as settled. The letter said 'we would appreciate our appeal continuing until the relevant departments in HMRC gets in touch with us to finalise the outstanding Tax Return, VAT and PAYE'.

33. However, continuing the appeal without either a request for a statutory review or an appeal was not an option, and a competent adviser should have known this.

34. I find that the 30 days for the appeal to be made ran from the letter of 31 January 2017, which clearly stated both routes that could be taken and gave the time limit. I therefore conclude that the appeal was 37 months late.

35. The reason for the delay from 2 March 2017 until 30 March 2017 is unclear but the delay is relatively short – the fact that there was no response at all from the appellant during the 30 day period is unfortunate.

36. The reason for the delay from 30 March until December 2017 is relatively clear – the appellant's representative erroneously thought that the 30 March letter would put the matter 'on hold' until the submission of the returns. A competent adviser would know that the matter could be appealed without the returns being submitted, and that there had been no extension of the 30 time limit.

37. The reason for the lack of communication about these specific returns from December 2017 onwards (and hence the delay in the appeal) is also unclear. The appellant (through his representative) should have been aware that the matter had not been appealed nor an independent review requested, and there appears to have been no attempt to find out what was happening to the revised returns submitted.

38. I find the reasons for the delay to be not persuasive of admitting the appeal.

39. I now turn to 'all the circumstances of the case'. If I do not allow the appeal, the assessments will stand and Mr Hadjicharalambous will have no method of putting forward his alternative view of what the assessments ought to be. I was not addressed by the appellant's representative on the strength of the underlying case.

40. If I do allow the appeal, I will be allowing a represented appellant to miss a time limit by some considerable margin. HMRC will be put to considerable difficulties finding witnesses for their case as the key witness has left HMRC. Finality will not be obtained by either side for a further period of time.

DECISION

41. The starting point in all late appeal cases is that the late appeal should not be allowed as time limits should be respected. I consider the delay considerable and the reasons for the delay weak, and I do not consider that a consideration of all the facts in the round produces any other reason why the appeal should be allowed.

42. The appeal is therefore DISMISSED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

43. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**SARAH ALLATT
TRIBUNAL JUDGE**

Release date: 26 OCTOBER 2021